

1 DENNIS F. MORIARTY (STATE BAR NO. 37612)  
 2 JOSE A. MONTALVO (STATE BAR NO. 184484)  
 3 CESARI, WERNER and MORIARTY  
 4 360 Post Street, Fifth Floor  
 5 San Francisco CA 94108-4908  
 Telephone: 415-391-1113  
 Facsimile: 415-391-4626  
 5110-3-13  
 Attorneys for Defendant  
 6 Lori Tyler

7 UNITED STATES DISTRICT COURT  
 8 NORTHERN DISTRICT OF CALIFORNIA

9 ,SHERRILL FOSTER, HOWARD FOSTER, ) No. C-07-5445-WHA  
 10 SHIELA BURTON and MINNIE BURTON, )

11 Plaintiffs,

12 vs.

13 SHANNON EDMONDS, LORI TYLER,  
 COUNTY OF LAKE, CITY OF  
 CLEARLAKE, and DOES 1-100.

14 Defendants.

15 } [PROPOSED] ORDER GRANTING  
 16 } DEFENDANT TYLER'S MOTION FOR  
 17 } JUDGMENT ON THE PLEADINGS AND  
 18 } TO DISMISS

19 } F.R.C.P., Rule 12(c); 28 USC §1367(c)(3)

20 Date: September 25, 2008

21 Time: 8 a.m.

22 Courtroom: 9, 19<sup>th</sup> Floor

23 } The Honorable Judge William H. Alsup,  
 24 Presiding

25 The motion of defendant LORI TYLER to dismiss plaintiffs SHERILL FOSTER,  
 26 HOWARD FOSTER, SHEILA BURTON AND MINNIE BURTON's ("Plaintiffs") First  
 27 Amended Complaint pursuant to F.R.C.P. Rule 12(c) and 28 U.S.C. § 1367(c)(3), came on for  
 28 hearing on September 25, 2008 at 8:00 a.m., in Courtroom 9, 19<sup>th</sup> Floor of the above-entitled  
 court before the Honorable William H. Alsup.

25 The court, having considered the papers and arguments submitted in support of and in  
 26 opposition to the motion, and after oral argument, finds that Plaintiffs' First Amended  
 27 Complaint, filed on December 7, 2007, fails to state any cognizable federal claim against  
 28 Defendant Tyler under 42 U.S.C. § 1983 and, because there is no such cognizable claim, there is  
 no basis for pendent jurisdiction over plaintiffs' remaining state law claims.

[PROPOSED] ORDER GRANTING DEFENDANT TYLER'S MOTION FOR JUDGMENT ON THE PLEADINGS AND TO DISMISS

The court therefore ORDERS that all claims alleged against defendant LORI TYLER in Plaintiffs' First Amended Complaint be dismissed in their entirety.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
HONORABLE WILLIAM H. ALSUP  
UNITED STATES DISTRICT COURT JUDGE